



## Loudoun County, Virginia

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Loudoun County Board of Supervisors

1 Harrison Street, S.E., MSC #1, 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 777-0204 • Fax (703) 777-0421

June 30, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW.  
Washington DC 20554

**Re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (WC Docket No 17-84)**

Dear Commissioners,

Thank you for the opportunity to participate in the comment process on the above referenced Notice. Your correspondence included specific questions which have been distributed to several departments within Loudoun County (Virginia) and the County Communications Commission. This correspondence is based on the response to those questions and discussions which have been coordinated and consolidated by the Loudoun County, Department of Planning and Zoning. I hope you will see after review of these and other comments, that a sweeping preemption of local land use decision-making authority is not necessary and overreaching, especially in communities like Loudoun.

Loudoun County is opposed to any regulatory changes that limit local land use authority and impose unreasonable mandates as proposed by the Notice. In fact, it is Loudoun's position that Section 253(d) of the Telecommunications Act of 1996 does not authorize the FCC to adopt and promulgate blanket, mandatory interpretations or implementation of the Act or prospectively preempt local land use authority. Section 253(d) states: "*(d) Preemption - If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency*" (emphasis added). As indicated in the Notice, the FCC can initiate pre-emption action against a particular statute, regulation, etc., as it has historically used its Section 253 authority to address particular laws, or regulations.

Loudoun has a tradition of working collaboratively with telecommunication providers to provide services to the County. In 1996 the County adopted the Strategic Land Use Plan for Telecommunications Facilities (Telecommunications Plan) which provides guidance for the location, siting, design and mitigation of impacts on nearby land uses from telecommunications facilities. The County throughout the years has systematically updated its Zoning Ordinance and Telecommunications Plan to address current trends, changing

technologies and market demands within the telecommunications industry in an effort to expand telecommunication and broadband services to areas of the County in need. The on-going transition by providers from a copper-based communications network to high-speed fiber and wireless broadband is supported by County legislative initiatives and policies.

In July 2016, Loudoun approved amendments, as described in more detail below, to streamline and expedite the process for the approval of DAS, small cell (such as but not limited to micro cell, nano cell, pico cell) and wireless access point broadband antennas, at heights of 60 feet or less in all zoning districts when mounted on buildings and structures. The amendments allow County Staff to administratively approve applications in a shorter period of time, in turn allowing wireless providers to deploy antennas more quickly. Since the approval of these amendments a number of smaller regional wireless broadband providers have filed applications with the County to establish antenna support structures as they expand their networks into the more rural areas of the County not currently served.

Loudoun's existing policies and application review process do not inhibit the deployment of broadband infrastructure but rather encourage the expeditious deployment of broadband infrastructure. All fees required by Loudoun are commensurate with costs incurred by the County for providing such services, and apply reasonable timelines and conditions to all applications similar to other jurisdictions in the region.

The following comments address specific items in the FCC Notice, and many of the topics for proposed rules are not applicable to Loudoun:

**Deployment Moratoria:** Loudoun does not preclude any telecommunication providers from making application with the County. Loudoun's policies encourage the collocation of multiple providers on existing buildings, towers, monopoles, water tanks, overhead utility transmission line structures and other tall structures where possible to minimize the need for new facilities. Loudoun encourages competition among service providers to increase network coverage. In addition to the major providers (Comcast and Verizon FIOS), the County has three smaller independent providers of fixed wireless service (All Points Broadband, Telegia and Sugarloaf Networks) which provide broadband coverage to portions of the County's rural area using unlicensed spectrum.

**Approval Processes:** Loudoun has both by-right administrative and legislative review processes for the establishment of certain types of telecommunication antennas and facilities based on the height of the proposed facility. The by-right administrative process permits the deployment of telecommunications and wireless access point broadband antennas at a height of 60 feet or less on all buildings and structures, including antenna support structures, in all zoning districts subject to performance standards to regulate their size and appearance to achieve a degree of visible compatibility with the built environment. In several circumstances, monopoles are also permitted administratively. The processing of a by-right application can take two weeks to three months to process depending on the type of application.

The legislative review process is required for the establishment of new telecommunication facilities greater than 60 feet in height. Legislative approval requires (a) review and approval by the County's Planning Commission, pursuant to Section 15.2-2232 of the Code of Virginia, as well as the Zoning Ordinance, to assure that the approximate location, character, and extent of the facility is substantially in accord with the County comprehensive plan (locally referred to as a "Commission Permit") and/or (b) the processing of a Special Exception application (known as a conditional use or special use permit in some other localities) with public hearings before the Planning Commission and Board of Supervisors, which may take up to five months to process. The County permits these legislative applications to run concurrently and allows site plan submission and processing and permitting to also run concurrently with the legislative reviews.

In July 2016 Loudoun amended its Comprehensive Plan to provide that certain types of telecommunication facilities (such as collocation of additional antenna or related equipment on an existing tower, monopole or any other tall structure; collocation of antennas and monopoles within overhead utility transmission line rights of way and telecommunication and wireless access point broadband antennas that do not extend higher than 60 feet, mounted on any building or structure) shall be deemed as features on the Comprehensive Plan and shall not require Commission Permit approval.

**Excessive Fees, Costs:** Loudoun County does not have special fees for telecommunications applications, but processes these applications similar to other types of by-right and legislative applications under the same time frames with the same fees. The County's fees cannot exceed the cost of the review and in the case of special exceptions, the fee is less than the cost incurred by the County to review the application. Special exception fees vary from \$2,560 to \$15,750 based on the amount of land disturbance and the environmentally sensitive features on a site.

**Right-of-Way Negotiations:** The Virginia Department of Transportation (VDOT) has the exclusive authority to grant permission to place facilities within the publicly dedicated right-of-way (ROW). However, VDOT grants Loudoun the authority to review telecommunication applications within VDOT ROW applying applicable County Comprehensive Plan criteria and Zoning Ordinance standards. The County acts as the lead agency for the review of applications for the construction of telecommunication applications within VDOT ROW and seeks comment from VDOT as a referral agency to ensure conformance with road safety standards. VDOT customarily enters into a private lease agreement with the individual telecommunication provider for the use of the ROW which may have a cost associated with the lease.

**Unreasonable Conditions:** The County may apply reasonable conditions to its approval of Special Exception applications pursuant to the Virginia Code which expressly authorizes the County to grant special exceptions under "suitable regulations and safeguards." No conditions may be applied to the approval of Commission Permits or administrative (by-right) approvals. For special exceptions, the most commonly applied conditions relate to

landscape buffering surrounding ground equipment, use of stealth design for a monopole when appropriate to the location, and a requirement that the monopole be capable of adding antennas in the future.

The County's existing development and zoning ordinance requirements provide fair and consistent standards to ensure that broadband facilities are located to appropriately protect surrounding properties and that facilities are engineered and constructed to ensure structural integrity and safety. Loudoun County contends that the proposed rules potentially eliminate the County's participation in the decision making process and its ability to exercise the land use authority historically possessed by all localities in this country to protect the health, safety, and welfare of its citizens. Loudoun policies and standards seek to balance the industry's and the community's needs for quality service and protection of community character.

If you have any questions, please contact Pat Giglio, Planner, Loudoun County Department of Planning and Zoning at 703-777-0246.

Sincerely,

A handwritten signature in black ink, reading "Phyllis Randall Choin". The signature is written in a cursive, flowing style.

Phyllis Randall  
Chairwoman  
Loudoun County Board of Supervisors

Cc: Board of Supervisors  
Charles Yudd, Deputy County Administrator  
Leo Rogers, County Attorney  
Ricky Barker, Director, Department of Planning and Zoning  
Wendy Wickens, Director, Department of Information Technology  
Tim Dennis, Chairman, Loudoun County Communications Commission